IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3353 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MONGHIBA KANUBHA VAGHEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SATYEN B RAWAL for Petitioner(s) : 1,
MR LB DABHI Ld. AGP for Respondent(s) : 1 - 4.
NOTICE SERVED for Respondent(s) : 2 - 4.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 14/09/2005

ORAL JUDGMENT

1. Rule. Learned AGP Mr.L.B.Dabhi waives service of notice of rule on behalf of respondents.

2. The petitioner is aggrieved by decision of the

respondent authorities in cancelling the nomination of family pension benefits in favour of the petitioner's handicapped daughter. It appears that the said decision was communicated by Annexure-F dated 15th March,2003 on the ground that the benefit of such family pension to disabled children would be available to employees who have retired after 1st May,1960 as per Resolution dated 6th July,1989. However, the order on basis of which this communication was addressed to the petitioner has not been supplied to the petitioner nor it is placed before this Court also.

3. It is also not in dispute that the said order was passed without affording any auidence to the petitioner. Considering the objectives behind the Resolution dated 6th July,1989 and 6th October,1999, once name of the petitioner's daughter Nandaba was taken on record as beneficiary of the family pension upon demise of the petitioner, before removal of her name i.e. before setting aside that earlier decision, at least audience ought to have been afforded to the petitioner and that having not been done, that order cannot be permitted to stand. Petition, therefore, deserves to be allowed. The order cancelling the nomination of Nandaba Kanubha Vaghel and communicated by communications dated 15th March,2003,

16th March,2003 and 23rd October,2003 is hereby quashed and set aside with a direction to respondent authorities to take a decision afresh on the question after affording opportunity to the petitioner to put forward her case. The earlier decision of respondent authorities recording nomination of the daughter of the petitioner Monghiben is restored subject to right of the respondent authorities to take a fresh decision as directed above. Rule is made absolute. No costs.

(A.L.Dave,J.)

(vipul)